(1) (2)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR C.G.

WRIT PETITION NO. 3571 **/ 2005**

PETITIONER:

Tarak Sarkar, S/o Shri Supad Sarkar, aged about 38 years, Occupation Assistant Veterinary Field Officer, R/o Kevramunda Ward , Near Gujrati Samaj , Jagdalpur, District Central Bastar, (C.G.)

P.R. No. 3661/05
Presented by Shri A/o K Dewangan
dated 29/12/05

VERSUS

RESPONDENTS:

1. State of Chhattisgarh Through the Secretary, Department of Agriculture (Animal Husbandry), Government of Chhattisgarh D.K.S. Bhawan, Mantralaya Raipur ,(C.G.)

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2. The Director, Department of Veterinary Services, Government of Chhattisgarh G.E.Road, Raipur, (C.G.)

3. The Joint Director , Department of Veterinary Services, Government of Chhattisgarh Jagdalpur Distt. Bastar (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUENCE OF WRIT IN THE NATURE OF MANDAMUS, PROHIBTION, CERTIORARI, AND ANY OTHER WRITS, DIRECTIONS OR ORDERS.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.No.3571/05 **सन् 200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	10.08.2005 Shri Alok Dewangan, counsel for the petitioner. Shri Arun Sao, Dy. Govt. Advocate for the State on advance copy. Heard. Learned counsel for the petitioner submits that the petitioner was prosecuted for the offence punishable under Sections 498-A & 494 of I.P.C. and Section 4 of Dowry Prohibition Act. He was convicted by the learned Chief Judicial Magistrate in criminal case No. 296/1999 (State –v- Tarak Sarkar and others). Thereafter, the petitioner filed a criminal appeal before the Sessions Court. This appeal was taken up for hearing by the Special Judge (ST & SC [Prevention of Atrocities] Act, 1989) Jagdalpur. The Special Judge allowed the appeal of the petitioner and by judgment dated 12.02.2004 passed in criminal appeal No. 5/2004 acquitted him from the said criminal case by setting aside the judgment of conviction and sentence awarded by the trial Court. Learned counsel for the petitioner submits that when the petitioner filed an application for reinstatement in the department on the basis of judgment of acquittal passed by the appellate Court, the authority of the department vide Annexure-P/2 has refused to entertain the matter for reinstatement on the ground that though order of conviction was set aside by the Sessions Court, the amount of fine deposited before the C.J.M has not been	

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मामला क्रमांक W.P.No. 3571/05 **सन्** / **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

refunded to the petitioner and they have demanded for the receipt of refund of fine.

Learned counsel for the petitioner further submits that when the petitioner filed an application before the learned Chief Judicial Magistrate for refund of the fine amount in sum of Rs. 1,000/- which he had deposited in that Court in pursuance of the judgment of conviction passed in criminal case No. 296/1999, the C.J.M. refused to refund the same by order dated 23.08.2004. Learned counsel for the petitioner submits that the Chief Judicial Magistrate has taken a view that since there is no order of refund of fine amount, therefore, the fine amount shall not be refunded and he rejected the application of the petitioner.

If in case of conviction and sentence including fine sentence awarded to an accused/petitioner, an appeal is filed and the appellate Court set aside the entire judgment of the trial Court and passed an order of acquittal in favour of the accused/petitioner then it necessarily includes the setting aside of all the sentences, jail sentence and the fine sentence and any separate order in relation to them are not required to be passed by appellate Court. If the entire judgment of the trial Court has been set aside, then there is not question of confusion about its interpretation.

Such views taken by the learned Chief Judicial Magistrate vide order dated 23.8.2004 (Annexure-P/5) and the authority of the State vide Annexure-P/2 are not only erroneous but are unfortunate. It appears that both the authorities specifically the

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

C.J.M. have not applied their mind to the judgment passed by the appellate Court. In one manner, the matter calls to take serious view against them.

However, looking to the facts and circumstances of the case, for the time being a direction is given to the petitioner to file a detailed representation within a period of 15 days from today along with copy of this order before the concerned departmental authority regarding reinstatement and if such a representation is filed, the concerned authority shall dispose of the same as early as possible preferably within a period of 30 days from the date of receipt of the representation keeping in mind the observation made by this Court.

The petitioner shall also be at liberty to file another application before the C.J.M. for refund of the fine amount which shall be disposed of by the C.J.M. in accordance with law.

With the aforesaid observations, the petition stands finally disposed of.

Certified copy of this order shall be supplied to the petitioner forthwith and one copy of this order shall be sent to the Chief Judicial Magistrate, Jagdalpur for apprising with the view taken by this Court.

Sd/-
Sunil Kumar Sinha
Judge

Vakti

23.8.05

(पीछे देखिये)